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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/788,560	01/24/97	YAMAZAKI	S 0756-1626

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SUITE 600
MCLEAN VA 22102

EXAMINER

FAHMY, W

ART UNIT

PAPER NUMBER

1931

DATE MAILED: 03/02/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

08/788,560

Applicant(s)

Yamazaki et al

Examiner

Wael Fahmy

Group Art Unit

1931



☒ Responsive to communication(s) filed on Jan 4, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 78-157 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 78-157 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

EXAMINER: Wael M.Fahmy

Claim 79 is missing the phrase "consisting of".

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 78-101, 103, 105-109, 111, 113-117, 119, 121-125, 127, 129-133 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Konishi et al.

Wilson discloses all claimed subject matter, including the formation of a transistor wherein the source/drain regions have at least one portion containing one or more elements selected from the group consisting of carbon, oxygen and nitrogen at a concentration higher than 10^{15} atoms/cm³, but omits the use of the transistor in a CMOS device. However Konishi et al teaches that transistors can be used in a CMOS device in an electro-optical device. Therefore it would have been obvious to one of ordinary skill in the art to have a portion of the source/drain regions of the CMOS in the konishi et al reference containing one or more elements selected from the group consisting of carbon, oxygen and nitrogen as taught by Wilson, since the

1 prior art teaches that such an improvement enhances overall device
2 structure and performance.

3 The following is a quotation of the appropriate paragraphs of 35
4 U.S.C. 102 that form the basis for the rejections under this section made in
5 this Office action:

6 A person shall be entitled to a patent unless --

7 (b) the invention was patented or described in a printed publication in this or a foreign
8 country or in public use or on sale in this country, more than one year prior to the date of
9 application for patent in the United States.

10 Claim 102,110,118,126 are rejected under 35 U.S.C. 102(b) as being
11 anticipated by Wilson.

12 Wilson discloses all claimed subject matter, including the formation
13 of a transistor wherein the source/drain regions have at least one portion
14 containing one or more elements selected from the group consisting of
15 carbon, oxygen and nitrogen at a concentration higher than 10^{15} atoms/cm³.
16 As to the preamble, see MPEP 2111.02.

17 The following obviousness-type double patenting rejection is based
18 on a judicially established doctrine grounded in public policy so as to
19 prevent the unjustified or improper timewise extension of the right to
20 exclude granted by a patent. **In re Sarett**, 327 F.2d 1005, 140 USPQ 474
21 (CCPA 1964); **In re Schneller**, 397 F.2d 350, 158 USPQ 210 (CCPA
22 1968); **In re White**, 405 F.2d 904, 160 USPQ 417 (CCPA 1969); **In re**
23 **Thorington**, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); **In re Vog I**, 422
24 F.2d 438, 164 USPQ 619 (CCPA 1970); **In re Van Ornum**, 686 F.2d 937,

1 214 USPQ 761 (CCPA 1982); **In re Longi**, 759 F.2d 887, 225 USPQ 645
2 (Fed. Cir. 1985); and **In re Goodman**, 29 USPQ 2d 2010 (Fed. Cir. 1993).

3 Claims 78-157 are rejected under the judicially created doctrine of
4 obviousness-type double patenting as being unpatentable over claims 1-9
5 of U.S. Patent No. 5,821,563. Although the conflicting claims are not
6 identical, they are not patentably distinct from each other because The
7 claims teach a similar electro-optical device having a portion of the
8 source/drain containing an element selected from the group consisting of
9 carbon, nitrogen or oxygen .

10 A timely filed terminal disclaimer in compliance with 37
11 C.F.R. 1.321(b) would overcome an actual or provisional rejection on a
12 non-statutory double patenting ground provided the conflicting application
13 or patent is shown to be commonly owned with this application. See 37
14 C.F.R. 1.78(d).

15 The Examiner notes that over and above a "basic" obviousness-type
16 double patenting situation wherein a comparison of the claims takes place,
17 the case law detailed above makes it clear that in cases where Applicant
18 has voluntarily filed a later application seeking claims which provide a
19 different form of coverage for same general invention disclosed in a parent,
20 an obviousness type double patenting rejection may automatically apply
21 since the granting of the claims of the later filed application may

1 automatically extend the patent term granted for the original patented
2 claims on the same general invention.

3 Applicant's amendment necessitated the new ground(s) of rejection
4 presented in this Office action. Accordingly, **THIS ACTION IS MADE**
5 **FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of
6 time policy as set forth in 37 CFR 1.136(a).

7 A shortened statutory period for reply to this final action is set to
8 expire THREE MONTHS from the mailing date of this action. In the event a
9 first reply is filed within TWO MONTHS of the mailing date of this final
10 action and the advisory action is not mailed until after the end of the
11 THREE-MONTH shortened statutory period, then the shortened statutory
12 period will expire on the date the advisory action is mailed, and any
13 extension fee pursuant to 37 CFR 1.136(a) will be calculated from the
14 mailing date of the advisory action. In no event, however, will the statutory
15 period for reply expire later than SIX MONTHS from the date of this final
16 action.



18 **Any inquiry concerning this communication or earlier**
19 **communications from the adjudicator should be directed to Wael M.**
20 **Fahmy whose telephone number is (703) 306-3488 or (703) 308-4918.**
21 **The Adjudicator can normally be reached on Monday- Thursday 7:00**
22 **AM-4:30 PM. The Adjudicator can also be reached on alternate**
23 **Fridays.**

1 **If attempts to reach the adjudicator by telephone are**
2 **unsuccessful, the adjudicator's supervisor, Ms. Angela Sykes, can be**
3 **reached at (703) 306-3484, and Patent Analyst, Chris Mercer, can be**
4 **reached at (703) 306-3471. The fax phone number for the group is**
5 **(703) 308-4363.**

6 **Any inquiry of a general nature or relating to the status of this**
7 **application should be directed to the Patent Assistant, Barry**
8 **Nicholson whose telephone number is (703) 306-3483.**

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11
12 **Wael M.Fahmy**
13 **Adjudicator**
14 **Art Unit 1931**
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